

REPLY UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
TECHNOLOGY CENTER 1700
Docket No. 1670.1020

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Koji Shigemura

Application No. 10/717,571

Group Art Unit: 1792

Confirmation No. 9396

Filed: November 21, 2003

Examiner: James Lin

For: DEPOSITION MASK FRAME ASSEMBLY, METHOD OF FABRICATING THE SAME,
AND METHOD OF FABRICATING ORGANIC ELECTROLUMINESCENT DEVICE
USING THE DEPOSITION MASK FRAME ASSEMBLY

**PETITION UNDER 37 CFR 1.181(a) FOR WITHDRAWAL OF FINALITY OF
OFFICE ACTION AND RESTARTING OF PERIOD FOR RESPONSE**

Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Examiner issued a Final Office Action on April 10, 2008, in response to the Reply Brief of February 14, 2008. However, it is submitted that the finality of the Final Office Action of April 10, 2008, is premature for the following reasons.

On page 2 of the Final Office Action of April 10, 2008, the Examiner states as follows:

The certified English translation of the Japanese Patent Application No. 2002-339616 priority document was received on 2/14/2008 along with the Reply Brief. According to MPEP 1207.03.V.B, the Reply Brief is treated as a request that prosecution be reopened under 37 CFR 41.39(b)(1) if it is accompanied by any amendment or evidence. The filing of a certified translation is a submission of evidence. Thus, the prosecution of this case has been reopened.

The Examiner is presumably referring to the following statement in MPEP 1207.03(V)(B) on MPEP page 1200-38:

The reply brief must also be in compliance with requirements set forth in 37 CFR 41.41, e.g., it cannot include any new amendment or affidavit. If the reply brief is accompanied by any amendment or evidence, it would be treated as a request that prosecution be reopened under 37 CFR 41.39(b)(1).

Title 37 CFR 41.41(A)(2) of 37 CFR 41.41 referred to in the above passage reads as follows:

A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

However, it is submitted that nothing whatsoever in the above passages or in any other portions of the MPEP and Title 37 CFR supports the Examiner's position that "[t]he filing of a certified translation is a submission of evidence." Accordingly, it is submitted that the Examiner's reopening of prosecution and issuance of the Final Office Action of April 10, 2008, was improper.

Although the English translation of the Japanese priority application is listed in the Evidence Appendix of the Reply Brief of February 14, 2008, this was done merely to avoid the possibility that the Reply Brief might be objected to on formal grounds for failure to comply with 41.37(c)(1)(ix), and is not an admission by the applicant that the English translation of the Japanese priority application filed with the Reply Brief of February 14, 2008, pursuant to 37 CFR 1.55(a)(4) and MPEP 201.15 constitutes new evidence for the purposes of 37 CFR 41.41(A)(2) and MPEP 1207.03(V)(B).

Furthermore, it is submitted that justice requires that the finality of the Final Office Action of April 10, 2008, be withdrawn as being premature for at least the following reasons.

The applicant filed the English translation of the Japanese priority application with the Reply Brief of February 14, 2008, to remove the availability of Tsuchiya et al. (Tsuchiya) (WO 03/019988) as a reference against the claims of the present application. Tsuchiya was cited by the Examiner for the first time in the Examiner's Answer of December 19, 2007, and was relied on by the Examiner in the new grounds of rejection of claims 14-19, 21, and 22 based on

Tsuchiya set forth in the Examiner's Answer of December 19, 2007. However, the publication date of Tsuchiya is March 6, 2003, and thus the Examiner could have cited and relied on Tsuchiya in the Office Action of January 11, 2006, or the Final Office Action of June 6, 2006, or the Office Action of November 20, 2006, or the Final Office Action of February 27, 2007. Accordingly, it is submitted that the Examiner's belated citation of Tsuchiya in the Examiner's Answer of December 19, 2007, has substantially prejudiced the applicant, and it is submitted that justice requires that the finality of the Final Office Action of April 10, 2008, be withdrawn as being premature.

Pursuant to MPEP 706.07(c), for at least the foregoing reasons, it is submitted that the finality of the Final Office Action of April 10, 2008, is premature pursuant to MPEP 706.07(a), and pursuant to 37 CFR 1.181(a) and MPEP 706.07(d) and 710.06, it is respectfully petitioned that the finality of the Final Office Action of April 10, 2008, be withdrawn and that the period for response be restarted.

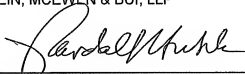
It is noted that this petition is being filed on Monday, May 12, 2008, which is the next business day after Saturday, May 10, 2008, which is one month from the date of the Final Office Action of April 10, 2008. Accordingly, it is submitted that this petition is being filed within one month of the date of the Final Office Action of May 12, 2008, pursuant to MPEP 710.06.

If there are any additional fees associated with the filing of this paper, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

STEIN, MCEWEN & BUI, LLP

Date: 05/12/08

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